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84-1738

NO. 84 - 1738

Supreme Court, U.S.
FILED
JUL 5 1985
ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

SACKETT-CHICAGO, INC.,

Petitioner,

v.

TERRY MIDGETT,

Respondent.

On Writ of Certiorari to the
Supreme Court of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

NICHOLAS T. KITSOS
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120 South LaSalle Street
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NO. 84- 1728

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TERRY MIDGETT,

Respondent.

On Writ of Certiorari to the
Supreme Court of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

Respondent TERRY MIDGETT respectfully objects to and oppose the Petition for Writ of Certiorari to the Supreme Court of Illinois filed with this Court by Petitioner SACKETT-CHICAGO, INC., herein called PETITIONER/EMPLOYER and for the reasons set forth herein request that this Honorable Court deny the said Writ for Certiorari.

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TERRY MIDGETT and a Member
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TABLE OF AUTHORITIES

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Midgett v. Sackett, (1982) 118 Ill App 3d 454 NE2d 1092 — 6

Title 28 USC, 1257(3) — 3

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OBJECTIONS TO JURISDICTION

Respondent TERRY MIDGETT objects to the jurisdiction for Writ of Certiorari to this Court. There is no jurisdiction for Writ of Certiorari to this Court as claimed by petitioner/employer and none exist under 28 USC 1257(3) as alleged by the Petitioner/Employer.

The Petitioner/Employer was barred, by the Opinion of the Supreme Court of Illinois, from raising on Appeal any claim that a federal statute was involved in any way since Petitioner/Employer had not previously raised this issue before the Trial Court or the Appellate Court and was thus held to have waived this issue for review on Appeal to the Supreme Court of Illinois.

No statutes or the validity of any treaties of the United States are involved nor is the validity of a state statute drawn in question as being regugnant to the Constitution, treaties, or laws of the United States.

No title, right, privilege or immunity is set up, or claimed under the Constitution, treaties, or statute of the United States or under a commission held or authority exercised under the United States.

The Supreme Court of Illinois, which is the State Court of last resort in this case, has not decided a federal question in this case concerning MIDGETT. Neither can its Opinion rendered in the MIDGETT case be properly construed or interpreted, at least that portion which talks about the Federal Labor Laws, as in conflict with the decision of another State Court of last resort or of a Federal Court of Appeals.

To avoid redundance, Respondent MIDGETT incorporates he[illegible] by reference and as part of this Objection the argument portion of this Opposition Brief pointing out why a federal question does not exist.

Additionally, the Decision by the Supreme Court of Illinois in the MIDGETT case, while very important in the State of Illinois as to the right to and protection to pursue the remedies afforded and granted to a worker under the State of Illinois Workmen Compensation Law, is not a federal question and deals only with the right of the State of Illinois to provide for and grant and protect its citizens remedies for seeking redress and benefits of industrial injuries occurring in Illinois. These rights, remedies, and protections afforded under Illinois Law for industrial injuries suffered by workers in Illinois are not applicable as such to any other situation outside the State of Illinois, as instructive as they may become to these other sister states and their citizens. The recognition of this by The Congress of the United States is obvious when it is considered that under Title 28 USC, Section 1445(c), the jurisdiction of the Federal Courts are denied to the Federal Courts to permit and recognize removals to the Federal Courts of such cases as this This clearly shows an intent by Congress that the Workmen's Compensation Laws of a State such as Illinois remain in the exclusive jurisdiction of the State Judiciary and Agencies of the State and not in any Federal Judicial or Quasi Judicial Tribunal. Neither can this Opinion and Decision of the Illinois Supreme Court be considered in any way as being in conflict with the applicable Decision of this Court. Again, Respondent MIDGETT, to avoid redundancy, incorporates by reference and adoption the portions of the argument that follow herein arguing that there is no federal question involved.

SUMMARY OF ARGUMENT

By this Certiorari Petition, the Employers are actually contending only that this Court reverse the Decision of the Supreme Court of Illinois to afford the Employer the ability and power to immunize the Employer against the sanctions imposed in Illinois and by Illinois Law and by this Decision of the Supreme Court of Illinois against Employers who intentionally, willfully and with malice contravene and violate the strong Public Policy of the State of Illinois creating, establishing, and protecting the right of the worker to file a Workmen's Compensation claim under State Law for an industrial injury suffered and in the course of his employment.

ARGUMENT AND REASONS WHY THIS CASE SHOULD NOT BE REVIEWED

I

THE FILING OF A WORKMEN'S COMPENSATION CLAIM WITH THE ILLINOIS INDUSTRIAL COMMISSION BY A WORKER AGAINST AN EMPLOYER FOR AN INDUSTRIAL INJURY SUFFERED IS NOT A FEDERAL QUESTION

No where in the Petition for Writ of Certiorari do the Employers contend or claim that the right of the Worker to file a Workmen's Compensation claim with the State Industrial Commission for an industrial injury suffered in the course of employment is a matter or right created or covered by a Labor Union Contract that might fit the description of Labor Union Contracts considered as the subject matter of Federal Labor Law.

Nor do the Petitioning/Employer claim or assert to this Court that the Respondent/Worker does not have this right independent of any Labor Union Contract to so file and readily admit and

recognize in the Petition that the State of Illinois, in providing for the welfare and well-being of its citizens and people has the absolute unconditional right to promulgate and create the remedy that its citizens and people may enjoy and pursue in this respect.

The history and background and juxtaposition of the Workmen's Compensation Law of Illinois is most amply explained and traced in the prior cases of Kelsay v. Motorola Inc., (1978) 74 Ill. 2d 172, 384 NE2d 353; Wyatt v. Jewel Companies, (1982) 108 Ill. App. 3d 840, 439 NE2d 1053; Palmateer v. International Harvester Company, (1981) 85 Ill. 2d 421 NE2d 876; Midgett v. Sackett (1982) 118 Ill. App. 3d 454 NE2d 1092.

The Union Labor Contracts referred to by the Petitioner/Employer in this case readily recognize and admit the lawful existence of the Illinois Industrial Commission and the Workmen's Compensation Laws of the State of Illinois independent of anything in the Labor Union Contracts.

Furthermore, the Petitioner/Employer does not claim or contend that the right to file a Workmen's Compensation claim arises from the alleged Union Labor Contract whether or not this Union Labor Contract some how can be argued as being a matter covered by Federal Labor Law. The Petitioner/Employer readily admits that the right of the Worker to file for an industrial injury is created, established, and granted exclusively by the State of Illinois. Neither does the Petitioner/Employer object to or criticize or claim that the protection afforded by the State of Illinois, to ensure the right to file shall be a reality and not an illusion, encroaches upon in any way with the Federal Labor Laws. In other words, that is not the contention of this Petitioner/Employer and this being so, no federal question surfaces remotely in any way with the filing of the claim by the Worker.

If the filing is outside the scope of the Federal Law, it is difficult to conjure up a logical reason why the State cannot protect the filing and why the protection afforded cannot be as proscribed by the State Laws rather than by the immunization methods claimed by the Employer.

II

THE STRONG PUBLIC POLICY OF THE STATE OF ILLINOIS PROTECTING THE RIGHT OF THE WORKER TO SO FILE WORKMEN COMPENSATION CLAIMS IS NOT A FEDERAL QUESTION

It should be noted that the Petitioner/Employer here further readily admits to this Court that the right to file a Workmen's Compensation claim can be protected by the State and that the strong State Public Policy of protection is not in error nor in any way encroaches upon Federal Labor Law. Rather, Petitioner/Employer contends solely that this Court recognize and allow the Employer to determine what protection should be afforded the Worker in exercising the right granted to him by the State rather than by State Laws exclusively.

It is illogical to admit on the one hand that the State has the right to protect and promulgate laws ensuring that the Word-r's Worker's right to file a claim are not thwarted and frustrated and rendered meaningless while at the same time arguing that only the Employer/Petitioner should be afforded the exclusive right to determine the protection to be allowed.

It is obvious and traditional that the protections provided by State Law can provide the exclusive means for the enforcement of these protections and the Petitioner/Employer should not be

permitted in any way to be in a position to lessen or alter these protections, for to do so, the Petitioner/Employer then can mock, with impunity, the protections afforded by State Law and in effect act in total repugnance to such laws.

The protection allowed by State Law is not quarreled with as such by this Petitioner/Employer. Instead the Petitioner/Employer suggests that it should have the right to exculpate itself against the Public Policy of the State of Illinois so that it applies only to those employees who have failed or cannot exculpate themselves against willful, intentional, and maliciously unfair violations of the Public Policy through use of a Union Labor Agreement even though such as in this case, the Union Labor Agreement does not grant such rights claimed by the Petitioner/Employer. This contention would not advance the Federal Labor Law or Labor Law in any respect except to distort the underlying purposes of Labor Law.

III

ALLOWING THE REMEDY OF A CAUSE OF ACTION IN TORT NOW PERMITTED TO THE WORKER IN ILLINOIS AGAINST THOSE EMPLOYERS WHO INTENTIONALLY, WILLFULLY, AND MALICIOUSLY CONTRAVENE, VIOLATE, AND MOCK THIS STRONG STATE PUBLIC POLICY IS NOT A FEDERAL QUESTION

In the posture in which this case comes to this Court on the Petition for Review, the Petitioner/Employer is alleged to have intentionally, willfully, and with malice discharged the Worker solely and only in retaliation for the Worker filing a Workmen's Compensation Claim. The posture of the Petitioner/Employer then, under this record, is that this allegation is admitted as a matter of law by the Petitioner/Employer. Yet, this Petitioner/Employer asks this Court to reverse the Decision of the Supreme Court which solely seeks to establish and fulfill the protection afforded by Illinois Law against this wrongful and tortious conduct.

Furthermore the Petitioner/Employer readily admits and recognizes that the Employer contentions, if accepted by this Court, would ensure that the Worker and only the Worker who is covered by the Labor Union Contract of the employee would lose the following benefits;

(1) The right to sue in tort for punitive damages;

(2) The right to sue in tort for compensatory damages which include all damages that naturally flow from and are reasonably foreseeable from the intentional, willful, and malicious acts of the Petitioner/Employer;

(3) The right of the Worker to a jury trial to determine the above issues.

These loss of rights are amply treated in the Decision in this case by the Supreme Court of Illinois. Anything less as suggested now by the Petitioner/Employer than that described in the Opinion of the Supreme Court of Illinois and those right that would be lost to the Worker characterized above would simply reward a wrongdoer. That is simply what is suggested here to this Court by the Petitioner/Employer.

The reality here is that the employer in Illinois is always covered by insurance in Workmen Compensation injuries for the benefits that the Worker is afforded for the injuries suffered in this industrial accident. No burden for the payment of these benefits generally is imposed upon the Petitioner/Employer ..or does the Petitioner/Employer contend otherwise.

To avoid the sanctions created by Illinois Law for the intentional and willful violation of the Public Policy of Illinois in this case can be simply avoided by the Petitioner/Employer by not acting in a manner repugnant to the Public Policy and doing a wrongful and intentional act.

C O N C L U S I O N

The Petitioners have not demonstrated that review of the Decision of the Supreme Court of Illinois is warranted; for these reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

TERRY MIDGETT, RESPONDENT

BY: _____

NICHOLAS T. KITSOS, His Attorney of Record
AND A MEMBER OF THIS BAR

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NOTICE OF FILING, PROOF OF SERVICE, AND NOTORIZED STATEMENT

I, NICHOLAS T. KITSOS, being a member of the Bar of this Court do hereby certify that on July 3, 1985, pursuant to United States Supreme Court Rule 28.2, I filed an original with manuscript signature of the Respondent's Brief in Opposition with duly signed Affidavit and Motion for Leave to Proceed herein as in forma pauperis pursuant to Rule 46 together with Appearance of counsel of record and Member of this Bar on behalf of Respondent TERRY MIDGETT, by depositing in the United States Post Office and mail box, the same in an envelope with first class postage prepaid and properly addressed to the Clerk of this Court on this 3rd day of July, 1985 and that to the knowledge of the said Nicholas T. Kitsos, a member of this Bar, the mailing took place on that particular date and within the permitted time for the filing allowed which being July 6, 1985. NICHOLAS T. KITSOS further certifies that pursuant to Supreme Court Rule 28.3 he did serve a copy of the foregoing Opposition Brief, the Motion, Affidavit and Appearance form by mail on each party to the proceeding at the said time of filing by mail on July 3, 1985 in the same manner and fashion set forth above to said person, to wit:

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SO CERTIFIED AND UNDER OATH

NICHOLAS T. KITSOS, Attorney for Responder
and a Member ~~of this Bar~~.

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 3RD DAY OF JULY, 1985

Elizabeth Nathan

NOTARY PUBLIC